

40 KAR 2:050. Hearing procedures.

RELATES TO: KRS 367.461, 367.463, 367.465, 367.467, 367.469

STATUTORY AUTHORITY: KRS 15.180, 367.150(4), 367.469

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures for conducting a hearing by the Office of the Attorney General to revoke a permit to use automated dialing equipment in the Commonwealth of Kentucky.

Section 1. Hearings related to denials of applications or revocations of permits shall be governed by the provisions of this administrative regulation.

Section 2. Denial and revocation actions shall be heard by:

- (1) An Assistant Attorney General; or
- (2) A hearing examiner employed by the Department of Law as a hearing officer.

Section 3. An applicant or permittee shall have the right to:

- (1) Be present;
- (2) Be heard at the hearing;
- (3) Be represented by legal counsel;
- (4) Present evidence;
- (5) Cross-examine witnesses presented by the attorney prosecuting the matter before the hearing officer; and
- (6) Make both opening and closing statements.

Section 4. Prehearing Disclosure of Evidence. (1) A permittee shall have the right to:

- (a) Inspect the investigative file relating to a revocation action;
- (b) Represent himself, or be represented by counsel; and
- (c) Inspect tangible evidence in the possession of the hearing officer or the department.
- (2) An appointment for examination of a file or other evidence shall be made:
 - (a) Upon reasonable notice;
 - (b) During and for regular office hours; and
 - (c) For a time convenient to all parties.
- (3) At least ten (10) days prior to the scheduled hearing date, the permittee shall furnish to the Office of the Attorney General:
 - (a) Copies of documents he intends to introduce; and
 - (b) Produce for inspection tangible evidence within his possession or control that he intends to introduce.
- (4) Upon timely written notice, he shall produce such other information requested by the hearing officer.
- (5)(a) At least ten (10) days prior to the scheduled hearing date the permittee shall file with the hearing officer a written response to the specific allegations contained in the notice of charges.
 - (b) The hearing officer may for good cause permit the late filing of a response.
- (6)(a) After disclosure has been completed each party shall remain under an obligation to disclose any new or additional items of evidence which may come to its attention. Such additional disclosure shall take place as soon as practicable.
 - (b) Failure to disclose may result in the exclusion of the new evidence or testimony from the hearing.

Section 5. Order of Proceeding. (1) The hearing officer shall call the meeting to order and shall

identify the parties to the action and the persons present. The hearing officer shall rule upon any objections or motions. Opening statements shall be made, with the attorney prosecuting the allegations of the complaint proceeding first. Either side may waive opening statement.

(2) The taking of proof shall commence with the calling of witnesses on behalf of the attorney prosecuting the matter before the hearing officer. Witnesses shall be examined first by the attorney prosecuting the allegations of the complaint, then by the permittee or that person's attorney, and finally by the hearing officer. Rebuttal examination of witnesses shall proceed in the same order. Documents or other items may be introduced into evidence as appropriate.

(3) Upon conclusion of the case for the attorney prosecuting the matter before the hearing officer, the permittee shall call its witnesses. Witnesses shall be examined first by the permittee or that person's attorney, then by the attorney prosecuting the allegations of the complaint, and finally by the hearing officer. Rebuttal examination of those witnesses shall proceed in the same order. Documents or other evidence may be introduced as appropriate.

(4) The hearing officer shall be responsible for enforcing the general rules of conduct and decorum and expediting the hearing by keeping the testimony and exhibits relevant to the complaint.

Section 6. Evidence. (1) Formal rules of evidence shall not apply.

(2) A hearing officer shall exclude evidence that is:

- (a) Irrelevant;
- (b) Immaterial;
- (c) Unduly repetitious; or
- (d) Excludable on:
 - 1. Constitutional or statutory grounds; or
 - 2. The basis of evidentiary privilege recognized in the courts of the Commonwealth.

(3) Testimony or other evidence shall be admitted if it is:

- (a) Based on facts; and
 - (b) Commonly relied upon by reasonably prudent persons.
- (4)(a) Evidence shall not be excluded solely because it is hearsay.

(b) Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing relevant evidence.

(5) A hearing officer may admit party or witness testimony taken by deposition if:

- (a) A party or witness is unable to attend through no fault of his own; and
- (b) The opposing party has had a full opportunity to cross-examine the party or witness.

(6) Evidence may be received in written form if it will:

- (a) Expedite the hearing; and
- (b) Not substantially prejudice the interests of a party.

(7)(a) A copy or an excerpt of documentary evidence may be received.

(b) Upon request, a party shall be permitted to compare the copy or excerpt with the original.

(8) Official notice shall be taken of:

- (a) A fact that would be judicially noticed in the courts of the Commonwealth;
- (b) The record of other proceedings before the Office of the Attorney General;
- (c) Technical or scientific matters within the specialized knowledge of the Office of the Attorney General;

(d) Pursuant to the provisions of KRS Chapter 13A, codes or standards that have been adopted by:

- 1. An agency of the United States, the Commonwealth, or another state; or
- 2. A nationally recognized organization or association.

(9) Tangible items may be received into evidence the hearing officer is satisfied that the item is:

- (a) What it is represented to be; and

(b) In substantially the same condition as it was at the time of the events under consideration.

Section 7. (1) Upon the conclusion of the hearing, the hearing officer shall render a decision in writing with copies to all parties.

(2)(a) The decision of the hearing officer shall be reviewed by the Attorney General.

(b) The Attorney General shall:

1. Approve the decision; or

2. Modify the decision; or

3. Remand to the hearing officer for further action. (19 Ky.R. 535; Am. 1064; eff. 11-9-92; Crt eff. 2-21-2020.)